BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 81/SB/2019

Digamber Singh aged about 38 years s/o Sri Birbal Singh Rawat, at present working and posted on the post of Constable 30, Civil Police at Thana Patel Nagar, Dehradun.

WITH

CLAIM PETITION NO. 82/SB/2019

Lalit Kumar aged about 33 years s/o Sri Kalu Ram, at present working and posted on the post of Constable No.500, Civil Police, Kotwali, Rishikesh, Dehradun, Uttarakhand.

WITH

CLAIM PETITION NO. 85/SB/2019

Veer Singh aged about 49 years s/o Late Sri Buddhi Singh Panwar, at present working and posted on the post of Head Constable, Police Lines, Dehradun.

…….Petitioners

VS.

1. State of Uttarakhand through Secretary (Home), Govt. of Uttarakhand, Subhash Road, Dehradun.
2. Inspector General of Police, Gahrwal Region, Uttarakhand, Dehradun.
3. Senior Superintendent of Police, Dehradun, Uttarakhand.

….Respondents.

IN CLAIM PETITIONS NO. 81/SB/2019 & 82/SB/2018

Present: Sri L.K.Maithani, Counsel for the petitioners.
Sri V.P.Devrani, A.P.O., for the Respondents.

IN CLAIM PETITIONS NO. 85/SB/2019

Present: Sri V.P.Sharma, Counsel for the petitioners.
Sri V.P.Devrani, A.P.O., for the Respondents

JUDGMENT

DATED: SEPTEMBER 04, 2019

Justice U.C.Dhyani (Oral)

Since the factual matrix of the above noted claim petitions and law governing the field is the same, therefore, all the claim petitions are being decided together, by a common judgment, for the sake of brevity and convenience.

2. By means of above noted claim petitions, petitioners seek to set aside the impugned punishment order dated 22.11.2018 (Annexure: A 1 in all the files), passed by SSP, Dehradun and impugned appellate order dated 27.03.2019 (Annexure: A 2 in all the files), passed by the appellate authority with effect and operation and all consequential benefits.

3. Facts, giving rise to the above noted claim petitions, are as follows:

The claim petitioners were posted as Constables in Police Lines, Dehradun, in the year 2018. They were deputed on *Kaman duty* to escort accused Jagmohan alias Sonu, up to Rohtak, Haryana, on 07.03.2018. The said accused was to be produced before the Court at Rohtak. The above noted claim petitioners were given handcuffs to take accused Jagmohan alias Sonu to the Court at Rohtak on 07.03.2018. When the claim petitioners reached Railway Station, Rohtak on 08.03.2018, they asked the accused to sit in the railway waiting room. Constable Naresh Kumar (non petitioner) gave handcuffs to the claim petitioners and went to toilet . Allegedly, the claim petitioners gave the handcuffs to accused Jagmohan alias Sonu. In other words, handcuffed accused was left in crowded place all alone. The claim petitioners did not remain present with him. It was joint responsibility of all the Police Constables, noted above, to have remained with the accused with handcuffs, but they did not do so.

A news item was published in local daily along with photograph. Preliminary enquiry was got conducted by the disciplinary authority. Show cause notice along with draft censure entry under Rule 14 (2) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991 (for short, Rules of 1991), was served upon the

claim petitioners. They gave their replies, but the disciplinary authority was not satisfied with their explanations. As a consequence thereof, they were awarded 'censure entry' in their Annual Character Roll for the year 2018.

Their carelessness was termed as 'misconduct', which carelessness was put to censure *vide* Annexure: A 1 in all the petitions.

Aggrieved against the same, the claim petitioners preferred departmental appeals. The appellate authority, by elaborate orders, dismissed their departmental appeals *vide* order dated 27.03.2019 (Annexure: A 2 in all the files).

Faced with no other alternative, the claim petitioners have preferred the above noted claim petitions.

4. C.As./W.Ss. have been filed defending departmental action. It has been submitted that, the procedure, as laid down in the Rules, has been followed by the disciplinary as well as by the appellate authority and the Court should not interfere with the punishment of 'censure entry' awarded to the petitioners by the appointing authority/ disciplinary authority, which has been upheld by the appellate authority.

5. The facts are unambiguous. Petitioners were deputed to do *Kaman duty* to escort an accused from Dehradun to Rohtak, Haryana. The accused was to be produced before a Court. The claim petitioners were fortunate that the accused did not flee away from their custody, otherwise they would have faced severe departmental action, apart from criminal action. Proper criminal proceedings would have been initiated against them, in a Court of Law, under Indian Penal Code. The departmental proceedings, in any way, would have been initiated against the claim petitioners. Since the accused did not flee away from their custody, therefore the disciplinary authority, as also the appellate authority thought it proper to award them with censure entry. Had the accused, who was being escorted by them, fled away, probably they would have met with serious charges and would have been liable to graver departmental punishment. It is just possible that they would have been given major penalty, instead of minor penalty of 'censure'. The

Police Constable, who handed over handcuffs to the claim petitioners, did not face any departmental action. It was the duty of the present petitioners to have duly escorted the accused, for he might have fled away from the crowded place like Railway Station, if none of the Police Personnel were there to keep a vigil on him. It was the joint responsibility of the above noted petitioners to have remained with the accused from the point of view of security also. They did not do so. At least, the same is not reflected from the material brought on record. 'Misconduct' is writ large on the face of it. Nobody can deny that they did not commit a 'misconduct'.

6. What is misconduct? The same finds mention in Rule Sub-rules (1) & (2) of Rule 3 of the Uttarakhand Government Servants Conduct Rules, 2002 , as below:

> **"3(1)** Every Govt. servant shall, at all times, maintain absolute integrity and devotion to duty;
> **3(2)** Every Govt. servant shall, at all times, conduct himself in accordance with the specific and implied orders of Government regulating behavior and conduct which may be in force."

The word 'devotion', may be defined as the state of being devoted, as to religious faith or duty, zeal, strong attachment or affection expressing itself in earnest service.

7. Discipline is the foundation of any orderly State or society and so the efficiency of Government depends upon (i) conduct and behavior of the Government servants (ii) conduct and care in relation to the public with whom the Government servants have to deal. The misconduct of the Government servants reflects on the Government itself and so it is essential that the Government should regulate the conduct of Government servants in order to see the interest of Government, as well as, the interest of the public is safeguard.

8. Every Government servant is expected to maintain absolute integrity, maintain devotion to duty and in all times, conduct himself in accordance with specific or implied order of Government. It is duty of the servant to be loyal, diligent, faithful and obedient.

9. The term ‘misconduct’ has not been defined in any of the conduct rules or any other enactment. The dictionary meaning of the word ‘misconduct’ is nothing but bad management, malfeasance or culpable neglect of an official in regard to his office. Shortly it can be said that misconduct is nothing but a violation of definite law, a forbidden act.

10. The word ‘misconduct’ covers any conduct which in any way renders a man unfit for his office or is likely to hamper or embarrass the administration. Misconduct is something more than mere negligence. It is intentionally doing of something which the doer knows to be wrong or which he does recklessly not caring what the result may be. Both in law and in ordinary speech, the term ‘misconduct’ usually implies an act done willfully with a wrong intention and has applied to professional acts. So dereliction of or deviation from duty cannot be excused

11. The Conduct Rules, therefore, stipulate that a Government servant shall, at all times, conduct himself in accordance with orders of the Government (specific or implied) regulating behavior and conduct which may be in force.

12. A Division Bench of Hon’ble High Court of Judicature at Allahabad, in *Bhupendra Singh and others vs. State of U.P. and others, (2007)(4) ESC 2360 (ALL)(DB),* held that the provisions of Rule 4(1)(b)(iv) of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules of 1991(for short, Rules of 1991) are valid and *intra vires.* Censure entry, therefore, could be awarded.

13. Here the petitioner has been awarded minor penalty, in which the procedure prescribed is as follows;

> **Sub- rules (2 & 3) of Rule 5 of the Uttar Pradesh Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991**
> “**Sub-rule (2)**— The cases in which minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in sub-rule (2) of Rule 14.
> **Sub-rule (3)**— the cases in which minor penalties mentioned in sub-rule (2) & (3) of Rule 4 may be awarded, shall be dealt with in accordance with the procedure laid down in Rule 15.”

14. The next question would be, what are the minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4? The reply is as follows:

> **(b) Minor Penalties**:
> *(i) Withholding of promotion.*
> *(ii) Fine not exceeding one month's pay.*
> *(iii) Withholding of increment, including stoppage at an efficiency bar.*
> *(iv) Censure.*

15. Most relevant question, from the point of view of present petitioner, would be— what is the procedure laid down in sub-rule (2) of Rule 14?

> "**14(2)**- Notwithstanding anything contained in sub-rule (1) punishments in cases referred to in sub-rule (2) of Rule 5 may be imposed after informing the Police Officer in writing of the action proposed to be taken against him and of the imputations of act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal."

16. The inquiry contemplated under the Police Regulations is in the nature of preliminary investigation. The purpose is that before the Superintendent of Police decides whether any further action is necessary in respect of any complaint brought to his notice, he or she should be in a position to see whether there is any truth in such imputation. The inquiry is, therefore, meant only for personal satisfaction of the Superintendent of Police to enable him or her to come to a decision as to whether the matter is to be dropped or whether any action is necessary. No punishment can be imposed as a result of inquiry itself. In the instant case, the appointing authority has not awarded punishment to the petitioners on the result of preliminary inquiry. On the basis of such preliminary investigation, the appointing authority, foreseeing that it is a case of minor punishment, followed the procedure laid down in sub-rule (2) of Rule 14, which has been quoted above.

17. The appointing authority, after informing the delinquents of the action proposed to be taken against them and of the imputations of acts or omission on which it is proposed to be taken and after giving them a reasonable opportunity of making such representations, as they wished to make against the proposal, passed the impugned orders (Annexure: A 1 in all the files). Thereafter, the appellate authority, after considering the contents of appeals, affirmed the view taken by the disciplinary

authority and dismissed the appeals *vide* order Annexure: A2, in all the files. Thus, the appointing authority has followed the procedure laid down in sub-rule (2) of Rule 14. There is no reference of preliminary inquiry in the same. There is, however, reference of the explanation furnished by the delinquents. Essential ingredients of procedure laid down in sub-rule (2) of Rule 14 have been taken into consideration, while passing the order directing 'censure entry' against the claim petitioners.

18. There is no reference of 'preliminary inquiry' in sub-rule (2) of Rule 14 of the Rules of 1991. Such sub-rule only prescribes that minor punishments may be imposed after informing the Police Officer in writing, of the action proposed to be taken against him, and of the imputations of acts or omission, on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation, as he may wish to make against the proposal. Such preliminary inquiry is merely a fact finding inquiry. It is only meant for the satisfaction of the appointing authority, notwithstanding the fact that the delinquent was also involved in it. Preliminary inquiry, in the instant cases, has been used by the appointing authority only to derive satisfaction for giving show cause notices, which is in the nature of informing the delinquents of the action proposed to be taken, imputations of the acts or omission and giving them a reasonable opportunity of making representation. Preliminary inquiry has not been used in arriving at a finding. It is only a precursor to the action proposed to be taken.

19. The next question would be— what is the extent of Court's power of judicial review on administrative action? This question has been replied in Para 24 of the decision of in *Nirmala J. Jhala vs. State of Gujrat and others, (2013) 4 SCC 301,* as follows:

> "24.The decisions referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides,

> dishonest/ corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/ examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene."

20. 'Judicial review of the administrative action' is possible under three heads, *viz:*

> (a) illegality,
> (b) irrationality and
> (c) procedural impropriety.

Besides the above, the 'doctrine of proportionality' has also emerged, as a ground of 'judicial review', of late.

21. This Tribunal, therefore does not find it to be a case of judicial review, in the absence of any material on record, to hold that formation of belief/ opinion by the appointing authority, as upheld by the appellate authority, suffers from *malafide* or there is anything, on record, to hold that there was procedural error resulting in manifest miscarriage of justice and violation of principles of natural justice. There were reasonable grounds before the authorities below to have arrived at such conclusion. This Tribunal is of the view that due process of law has been followed while holding the delinquents guilty of misconduct. No legal infirmity has successfully been pointed in the same.

22. Any allegation against the delinquent Police official may not be treated as true, but when such insinuation is fortified by some substance, on record, the court may draw an adverse inference against the delinquent. Standard of proof, in departmental proceedings, is preponderance of probability and not proof beyond reasonable doubt. Preponderance of probability has to be adjudged from the point of view of a reasonable prudent person. If present cases are adjudged from the aforesaid yardstick, this Tribunal finds no reason to interfere in the

inferences drawn by the Disciplinary Authority, as upheld by the Appellate Authority. This Tribunal, therefore, is unable to take a view different from what was taken by the appointing authority as upheld by the appellate authority.

23. During the course of arguments, Ld. Counsel for the petitioners confined their prayers only to the extent that some 'other minor penalty', as provided in the Rules of 1991 may be awarded to the petitioners, in as much as censure entry entails serious civil consequences, for which petitioners shall not be able to cope with, they will feel satisfied if the censure entry is substituted by any 'other minor penalty' such as 'punishment drill'. Ld. A.P.O. opposed such argument of Ld. Counsel for the petitioners and submitted that the procedure, as prescribed in the Rules of 1991, culminates only into major or minor penalty. The procedure, as prescribed, does not culminate into 'other minor penalties' as provided under sub-rules (2) & (3) of Rule 4 of the Rules of 1991.

24. Ld. A.P.O. drew attention of this Tribunal towards Rule 15 of the Rules of 199. Procedure prescribed in Orderly room punishment is, as follows:

> "**15- Orderly room punishment**— Reports of petty breaches of discipline and trifling cases of misconduct by a Police Officer, not above the rank of Head Constable, shall be enquired into and disposed of in orderly room by the Superintendent of Police or other Gazetted Officer of the Police Force. In such cases punishment may be awarded in a summary manner after informing the Police Officer verbally of the act or omission on which it is proposed to punish him and giving him an opportunity to make verbal representation. A Register in Form 2 appended to these rules shall be maintained for such cases. In this Register, text of the summary proceeding shall be recorded."

25. This Tribunal is unable to accept such contention of Ld. A.P.O. that the disciplinary authority or appellate authority or the Tribunal cannot award punishment as prescribed under sub-rules (2) & (3) of Rule 4 of the Rules of 1991 merely because the procedure of minor penalties [Rule 4 (1)(b)] has been followed.

26. The law is that the procedure adopted for comparatively minor punishment cannot be used to give punishment for graver misconduct,

but the converse is not true. The procedure adopted for comparatively minor punishment, cannot be used to give bigger penalty, but the procedure adopted for bigger penalty may be used to give 'orderly room punishment' or comparatively minor penalty. Law is clear on the point.

27. In Prem Shankar Shukla v. Delhi Admn., (1980)3 SCC 526, Hon'ble Apex Court has observed as below:

> *"Handcuffing is prima facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article 21. Thus, we must critically examine the justification offered by the State for this mode of restraint. Surely, the competing claims of securing the prisoner from fleeing and protecting his personality from barbarity have to be harmonised. To prevent the escape of an under trial is in public interest, reasonable, just and cannot, by itself, be castigated. But to bind a man hand-and-foot, fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in the courts is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture."*

28. In the same decision, Hon'ble Supreme Court has held as under:

> *"Even in cases where, in extreme circumstances, handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Otherwise, under Article 21 the procedure will be unfair and bad in law. Nor will mere recording the reasons do, as that can be a mechanical process mindlessly made. The escorting officer, whenever he handcuffs a prisoner produced in court, must show the reasons so recorded to the Presiding Judge and get his approval. Otherwise, there is no control over possible arbitrariness in applying handcuffs and fetters. The minions of the police establishment must make good their security recipes by getting judicial approval. And, once the court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorises stringent deprivation of life and liberty."*

29. Coming to the case on hand, it does not appear that detenue had a tendency to escape from police custody. The police party, escorting him, was although required to put strict vigil on detenue, but the same does not mean that they were required to put the handcuffs, for all the time, on him. It is open to the question as to from which angle, the photographer took the photograph. In any case, it cannot be discerned that the members of escorting party did not put a vigil on the detenue. It is possible that the detenue might not have been handcuffed by the members of the police party for all the times, which fact is culled out, during the preliminary enquiry, but the same is not suggestive of the fact

that the members of the police party turned away their vigilant eye from him. It was not necessary for the escort party to bind the prisoner with handcuffs. It was required only in extreme circumstances. It may be stated, at the cost of repetition, that the detenue had no tendency to escape, otherwise, he would have made an attempt to escape or might have escaped. Under these circumstances, a case of 'punishment of drill for 15 days', which is akin to the censure entry *minus* civil consequences, is made out. Both are found in the statute book, under the head of minor penalties. This fact may be noted here that the petitioners are constables and, therefore, other minor penalty may be awarded to them. Degree of carelessness on the part of the petitioners is lesser than what is projected to be and that makes out a case of punishment of lesser degree.

30. There is difference between 'technical justice' and 'substantial justice'. The primary function of the Court is to adjudicate dispute between the parties and to advance substantial justice. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of non deliberate act. It has been observed by Hon'ble Apex Court in *Collector Land Acquisition Anant Naag & another vs. MST Katiji & others, AIR 1987 SCC 107*, although in different context, that "it must be grasped that judiciary is respected not on account of its' power to legalize injustice on technical grounds, but because it is capable of removing injustice and is expected to do so." Again, in *State of Nagaland vs. Lipok Ao and others, (2005) 3 SCC 752*, albeit in a different backdrop, the Hon'ble Apex Court was pleased to observe that "a pragmatic approach has to be adopted and when substantial justice and technical approach are pitted against each other, the former has to be preferred."

31. Under sub-rule (1) (b) (iii) of Rule 4 of the Rules of 1991, Constables may also be punished with 'punishment of drill not exceeding 15 days'. 'Punishment drill' is also a type of minor penalty, which finds place in the statute book and appears to be *at par* with 'censure entry' *minus* civil consequences. In other words, whereas

'censure entry' entails civil consequences, 'punishment drill' does not. Considering the facts of these claim petitions, this Tribunal finds that rigour of censure entry should be mitigated, in the peculiar facts of the cases, if the petitioners are awarded with 'other Minor Penalty', *viz,* 'punishment drill', instead of 'censure entry'. This Tribunal has been persuaded to interfere, only to this extent, on the ground of emerging 'doctrine of proportionality', substituting 'censure entry' with 'punishment drill for 15 days'.

32. Order accordingly.

33. The claim petitions thus stand disposed of. No order as to costs.

34. Let a copy of this judgment be placed in the file of each connected claim petition.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 04,2019
DEHRADUN

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